

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Order Instituting Rulemaking to Implement
Senate Bill No. 1488 (2004 Cal. Stats., Ch. 690
(Sept. 22, 2004)) Relating to Confidentiality of
Information.

Rulemaking 05-06-040
(Filed June 30, 2005)

**ADMINISTRATIVE LAW JUDGE'S RULING
SETTING POST-HEARING BRIEFING SCHEDULE AND
ADDRESSING MOUNTAIN UTILITIES' STATUS**

This ruling 1) sets a post-hearing briefing schedule, and 2) addresses the
Motion of Mountain Utilities for Exemption from Participation in R.05-06-040.

Briefing Schedule

Post-hearing briefs are due as follows:¹

Opening Briefs: February 6, 2006

Reply Briefs: February 22, 2006

All parties shall follow the briefing outline set forth in Appendix A to this
ruling.²

Mountain Utilities

Mountain Utilities is a tiny utility serving vacation homes in Kirkwood
Valley. It seeks an exemption from participating in this proceeding.

¹ The parties stipulated to this briefing schedule. Hearings occurred November 28-
December 2, 2005. Parties initially asked that briefs be due January 27, 2006, and reply
briefs be due February 17. They later sought a brief extension, which I granted.

² I emailed the briefing outline, which built upon an outline the parties prepared, to the
service list on January 13, 2006.

The confidentiality rules applicable to small investor owned utilities such as Mountain Utilities was not the subject of the hearings held in this case. Mountain Utilities is free not to participate in the proceeding at this phase. It is premature, however, to determine whether to exempt it from any confidentiality rules we may adopt in the future for small utilities. Mountain Utilities may renew its motion at a more opportune time.

IT IS RULED that:

1. Post hearing briefs are due as follows:

Opening Briefs: February 6, 2006

Reply Briefs: February 22, 2006

2. All parties shall follow the briefing outline set forth in Appendix A to this ruling.

3. Mountain Utilities' motion is denied without prejudice.

Dated February 1, 2006, at San Francisco, California.

/s/ SARAH R. THOMAS

Sarah R. Thomas
Administrative Law Judge

Appendix A – Brief Outline

ALJ Thomas revisions 1/13/06
Draft Common Briefing Outline for Confidentiality OIR

Introduction & Summary

Executive Summary & Recommendations

Legal Issues

***What is Required for the CPUC to Show Compliance with SB 1488?
[ALJ Thomas: Include discussion of definitions of open decision making and meaningful public participation. For example, does SB 1488 require IOUs to produce information publicly that assists third parties in formulating bids in response to utility requests for proposal (RFP) for electricity? Is bidding activity “public participation” under the SB 1488 rubric, or private activity?]***

What Protections For Sensitive Information Exist Under The Law?

[e.g., discussion of Pub. Util. Code §§ 583, 454.5, Gov’t Code § 6250, and other] [ALJ Thomas: Discuss implications of § 583 being applicable only to information furnished the Commission by a “public utility.” How should information from other entities be handled by Commission staff and others? Also discuss statutes relevant to RPS: Pub. Util. Code §§ 399.12(b)(3)(B) and 399.14(a)(2)(A).]

Does The Law Require Uniform Treatment Of Sensitive Data Across Various Participants Before The CPUC? [ALJ Thomas: Discuss implications of § 454.5(g) limitation to electrical corporations. Assume for purposes of argument that the Commission will not mandate uniform treatment of sensitive data across participants, and address how each matrix category should be handled for IOUs and ESPs separately and independently]

What Are The Distinctions Between “Market Sensitive”, “Trade Secret” or other information that entities may wish to protect from public disclosure?

Definition of Terms

Distinctions between Terms

Legal implications for Commission protection [ALJ Thomas: Unclear what this topic covers; rewrite heading for clarity.]

Trade Secrets vs. Market Sensitive Information

[e.g., legal issues re coordination of protections between CPUC and CEC] [ALJ Thomas: Are “trade secrets” under statute the same as “market sensitive” information under statute?]

Policy Issues

What is Required for the CPUC to Show Compliance with SB 1488?

Sensitivity of Information in the Context of Procurement Decisions and Infrastructure Planning;

Parties Generally Agree That Some Near-Term Procurement-Related Data Should Remain Confidential; [ALJ Thomas: under this heading, reproduce portion(s) of IOU and ESP Matrix containing categories of data on which there is such agreement among parties]

Distinctions Re Duration of Protection [ALJ Thomas: include portion(s) of matrix under this heading showing differences among parties re duration of protection]

Parties Differ With Respect To Maintaining Confidentiality of Planning Information [ALJ Thomas: make sure you define “planning information” via a glossary. All parties shall use same definitions from glossary]

Discussion of Potential Harms Due to Release of Sensitive Procurement- or Planning-Related Data. [ALJ Thomas: What is “sensitive”? Are you referring to “market sensitive”? Use terms consistently and by reference to a glossary that all parties use.]

Policy Implications to Energy Agencies’ Treatment of Sensitive Information.

[e.g., infrastructure development impacts, open decisionmaking, etc. [AL] Thomas: What is “sensitive”? Are you referring to “market sensitive”? Use terms consistently and by reference to a glossary that all parties use.]

Participant Access To Data

[i.e., “market participant” vs. “non-market participating party”, etc.] [If contending § 454.5(g) or other law does not permit distinctions between market participants and non-market participants, explain purpose of language in that statute regarding non-market participants.]

Issues Concerning Application, Development and Structure of Protective Orders and Non-Disclosure Agreements.

[i.e., design, applicability, etc. for non-disclosure agreements and protective orders.] [AL] Thomas: How does widespread use of protective orders dovetail with SB 1488 obligations of public participation and open decision making? Meet and confer regarding a proposed protective order for Commission adoption in this proceeding, and append it to your brief.]

Discussion and Recommendations Regarding Specific Data Types and Proposed Data Treatment

[Discussion of matrix details in this section.]

IOU Matrix Data Types

Discussion of Data Types

Recommendations on Treatment

ESP Matrix Data Types

Discussion of Data Types

Recommendations on Treatment

Recommendation Regarding Need To Potentially Revisit Protection of Data Types over Time Due to Changed Circumstances

Other Issues

[Other issues not addressed above. ALJ Thomas: Add sections discussing the following

- Who bears the burden of proving that documents/data should be confidential? Support your contention.
- How shall the CPUC implement and enforce the rules it develops in this proceeding? Shall it promulgate procedural rules, require reporting by entities that submit confidential data, or take other steps?
- How shall the CPUC ensure that documents/data submitted in proceedings that are not under the procurement umbrella (see list in OIR), but contain the same material as the matrix are also treated in accordance with the rules developed in this proceeding?
- How can the CPUC ensure the integrity of and public confidence in its decisions if record information is confidential? How can the CPUC demonstrate a legitimate basis for its decision making if it bases its decision on a sealed record? What is the minimum amount of critical information the CPUC must make public in support of its decisions to ensure it is engaging in open decision making?
- Where load serving entities are required to meet legislative mandates (e.g., to meet statutory RPS requirements), how can these entities and the CPUC prove compliance if records are sealed or extensively redacted?

]

Conclusion

Appendix of party's proposed F/F, C/L

End of Appendix A

CERTIFICATE OF SERVICE

I certify that I have by mail this day served a true copy of the original attached Administrative Law Judge's Ruling Setting Post-Hearing Briefing Schedule And Addressing Mountain Utilities' Status, on all parties of record in this proceeding or their attorneys of record.

Dated February 1, 2006, at San Francisco, California.

/s/ JOYCE TOM

Joyce Tom

N O T I C E

Parties should notify the Process Office, Public Utilities Commission, 505 Van Ness Avenue, Room 2000, San Francisco, CA 94102, of any change of address to insure that they continue to receive documents. You must indicate the proceeding number on the service list on which your name appears.